

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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**APR 17 1997**

Federal Communications Commission  
Office of Secretary

In the Matter of	)	
	)	
Revision of Part 22 and Part 90	)	WT Docket No. 96-18
of the Commission's Rules to	)	
Facilitate Future Development	)	
of Paging Systems	)	
	)	
Implementation of Section 309(j)	)	PP Docket No. 93-253
of the Communications Act --	)	
Competitive Bidding	)	

To: The Commission

**COMMENTS OF NUCLA-NATURITA TELEPHONE COMPANY**

Nucla-Naturita Telephone Company (NNTC), by its attorneys and pursuant to Section 1.415(a) of the Commission's Rules, hereby submits its comments to the Further Notice of Proposed Rulemaking in the above-captioned proceeding.

**I. Statement of Interest**

NNTC is a small independent telephone company which provides local exchange telephone service to approximately 1,300 access lines in a 2,500 square-mile area of rural southwest Colorado. In addition to its landline plant, NNTC is a licensee in the Rural Radiotelephone Service and provides Basic Exchange Telephone Radio Systems (BETRS) service to subscribers at locations where local exchange telephone service cannot feasibly be provided by landline.<sup>1</sup> In that the Commission will auction the two-way VHF and UHF frequencies currently allocated to BETRS

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<sup>1</sup> BETRS facilities are typically needed in areas of rugged terrain where it is impracticable to string open wire or bury cable, primarily in the western states.

on a co-primary basis with the Paging and Radiotelephone Service, NNTC and its rural subscribers will be adversely affected by the geographic area licensing scheme. This action will make it impracticable, if not impossible, to license additional BETRS facilities or make necessary modifications to existing BETRS facilities in order to meet future demands for local exchange telephone service at locations where land line facilities cannot feasibly be constructed. The result will be to significantly compromise the Congressionally mandated universal service goals.

The future demand for local exchange service via BETRS is not based on speculation or supposition. To the contrary, NNTC is currently experiencing an influx of people into its service area literally from all over the country -- people who want to get away from the problems of the big city and are looking for a little solitude out in the country. They are buying up properties in remote areas but still want the security and convenience of having a telephone for emergencies as well as for contact with the outside world, both for personal and business use. These properties are as far as 20-30 miles from the nearest landline central office and often require travel over treacherous unpaved roads.

NNTC is doing its best to satisfy the demand for service in these areas which is expected to continue indefinitely. To this end, NNTC has been applying for additional BETRS facilities. However, the Commission's auction rules, which impose secondary

licensing for every future site-by-site BETRS facility,<sup>2</sup> pose a significant threat to NNTC's ability to continue to meet the demand for local exchange telephone service in the future.

## **II. The Commission Should Adopt Mandatory Partitioning for BETRS.**

In the Further Notice of Proposed Rulemaking, the Commission requested comment regarding its proposed partitioning rules. NNTC submits that the Commission should consider partitioning alternatives that are favorable to BETRS licensees in order to safeguard the ability of rural telephone companies to provide necessary local exchange telephone service via radio. See e.g. Telocator of America, 691 F. 2d 525, 537 (D.C. Cir. 1982).<sup>3</sup> In so doing, NNTC urges the Commission to give each rural telephone

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<sup>2</sup> As of May 12, 1997, the effective date of the Second Report and Order and Further Notice of Proposed Rulemaking, WT Docket No. 96-18 and PP Docket No. 93-253, 62 Fed. Reg. 11616 (March 12, 1997), grants of additional site-by-site BETRS facilities will be secondary to the geographic area licensee.

<sup>3</sup> The Commission should not overlook the fact that it would be totally impracticable for a rural telephone company or even a consortium of rural telephone companies to bid on BETRS spectrum in a market the size of an EA. Unlike paging which requires only a single frequency to provide service to tens of thousands of customers over a very wide area of service, BETRS requires, due to co-channel interference considerations, multiple frequencies to provide service to a relatively small handful of subscribers over a limited service area. Indeed, the Commission may take official notice of the fact that the typical BETRS application for authorization of a central office station at a single location typically requests assignment of two to four frequency pairs, and in some cases, ultimately 20 frequency pairs have been authorized. See Order at para. 34, n. 104. Given the number of frequencies that would be required for BETRS in rural areas, the Commission could not reasonably expect rural telephone companies to be able to bid on multiple-frequency spectrum in the EAs. To that extent, the Commission's auction rules unfairly discriminate against telephone companies in rural America.

company the right to require, at no cost to itself, the market area licensee to partition those portions of its market that are required by the rural telephone company to provide BETRS service. Such partitions would be based upon the parameters of the rural telephone company's proposed BETRS central office station facilities but, in no event could the partitioned area exceed the rural telephone company's certificated local exchange service area (except to the extent necessary to ensure that any BETRS central office station located within the rural telephone company's certificated service area would not receive nor cause harmful co-channel interference). Without this right, BETRS licensees would be forced to: (i) bid in the paging auctions for numerous channels in the market area,<sup>4</sup> which has been shown not to be practicable, or (ii) be at the mercy of the auction winners.<sup>5</sup>

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<sup>4</sup> This would lead to the unusual situation where a BETRS provider would be forced to bid on an entire market area without being able to meet the buildout requirements because it intends only to provide BETRS to a few customers in a small rural portion of the market. And, while potentially being forced to expend a substantial sum of money to acquire the market, there is no certainty that the BETRS provider would be able to recover its costs with respect to a partition of the rest of the market, as occurred following the C-block PCS auction. Additionally, if the BETRS provider would not promptly partition its geographic area license, it could be left with substantial overhead (all for the purpose of providing service to a few customers), which would substantially drive up its costs to the detriment of its ratepayers.

<sup>5</sup> The evidence of record does not support the Commission's supposition that geographic area licenses would be willing to enter into voluntary partitions with rural telephone companies for the provision of BETRS service. Without favorable rules from the Commission, NNTC expects such partitions would be costly, so  
(continued...)

NNTC submits that if its proposal is adopted, this will permit rural telephone companies to make necessary modifications to existing BETRS systems, as well as establish new BETRS systems, as subscriber demand warrants. NNTC believes that the impact of this proposal on the geographic area licensee would most likely be negligible, since the areas served by BETRS are sparsely populated and, due to their distance from urbanized areas and low population densities, are not typically served by paging carriers. Thus, even where the geographic area licensee would be required to protect a central office station located at the edge of the BETRS licensee's certificated area, the potential for harmful interference to the geographic area licensee's paging system is remote. BETRS stations typically operate at low power with highly directionalized antenna systems and so their co-channel interference potential is very limited.<sup>6</sup> Mandatory

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<sup>5</sup>(...continued)  
that the geographic area licensee could recover as much of its auction costs for the market as possible. This is so, even though service benchmarks are based upon population and not land area. Taken in combination with the fact that most BETRS systems are multi-channel, NNTC submits that the likelihood a rural telephone company will be able to reach an acceptable partition agreement with the affected geographic area licensees is slight, as demonstrated in the recent relocation of fixed microwave licensees from the 2 GHz band. In that proceeding, the Commission was ultimately forced to take action on behalf of the new PCS licensees because of the incumbent microwave licensees attempted to impose usurious demands as a condition of relocation. Nothing in the Commission's Order prevents the geographic area licensee from engaging in such behavior.

<sup>6</sup> Of course, the rural telephone company would not expect the Commission to force the geographic area licensee to partition its area if there are pre-existing, protected co-channel stations in the area which could not be protected by the rural telephone  
(continued...)

partitioning rights, as described above, would preserve universal telephone service to rural America without imposing an undue burden on the rights of the geographic area licensee. This is precisely the balancing act which Congress expected the FCC to engage in when it enacted Section 309(j)(6)(E) of the Communications Act of 1934, as amended.

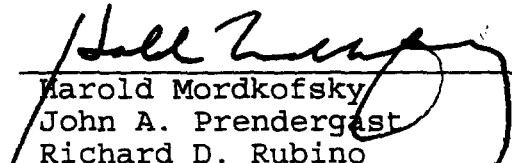
### III. Conclusion.

In light of the foregoing, it is respectfully requested that the Commission require mandatory partitioning of rural areas to BETRS licensees, as proposed herein.

Respectfully submitted,

**NUCLA-NATURITA TELEPHONE COMPANY**

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<sup>6</sup>(...continued)

company's BETRS station. In this regard, any co-channel paging station, which is constructed after the rural telephone company files its written request to partition the geographic area license, would not be entitled to protection. In order to afford adequate notice to the geographic area licensee, NNTC suggests that any such request be required to be served on the geographic area licensee, by telecopier and U.S. mail, first-class postage prepaid.